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In re Application of	:	
KOBAYASHI et al	:	
Application No.: 10/031,689	:	
Filing Date: 22 January 2002	:	<b>DECISION ON</b>
For: EXHAUST GAS RECIRCULATION	:	
APPARATUS AND EXHAUST GAS	:	<b>PETITION</b>
RECIRCULATION METHOD FOR	:	
INTERNAL COMBUSTION ENGINE	:	

This is a decision on the "REQUEST TO TREAT APPLICATION UNDER 35 U.S.C. 111(a) AND CORRECT FILING RECEIPT," filed 04 October 2002. Decision is **Granted**.

#### Background

On 30 March 2001 applicants filed an international application No. PCT/JP01/02820 which claimed a priority date of 24 May 2000 and which designated the United States.

On 22 January 2002, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), and a purported translation into English of the international application as required by 35 U.S.C. 371(c)(2). A copy of the international application as required by 35 U.S.C. 371(c)(2) was communicated by the International Bureau. The first page of the translated specification additionally included an identification of the application as being a continuation of PCT/JP01/02820.

On 03 April 2002, the United States Designated/Elected Office (DO/EO) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date, must be submitted within two months of the date of the Notification or by 22 or 32 months (where 37 CFR 1.495 applies) from the priority date, whichever is later. The period for response expired 03 June 2002, two months from the mail date of the Notification.

On 16 April 2002, applicants filed a Declaration and Power of Attorney for Patent Application.

On 16 September 2002 the United States Designated/Elected Office (DO/EO) mailed a NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495 (Form PCT/DO/EO/903), which notified applicants that the submission of the application had been accepted under 35 U.S.C. 371, which established 16 April 2002 as the date of receipt of the 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements, and which established 16 April 2002 as the date of receipt of all 35 U.S.C. requirements.

On 04 October 2002, applicants filed the request to treat the application under 35 U.S.C. 111(a) and to correct the filing receipt. Applicants pointed out that line 2 of page 1 of the specification had identified the application as being a continuation of PCT/JP00/08549. This statement in the request appears to be a misstatement since the page 1 of the specification actually (and correctly) identifies the application as a continuation of PCT/JP01/02820.

#### Discussion

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13, entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application the application will be accepted under 35 U.S.C. 111.

The papers which were filed by applicants in filing the application include the statement, "This application is a continuation of PCT/JP01/02820 filed on March 30, 2001" on the first page of the specification. This statement effectively defines the application as being filed under 35 U.S.C. 111(a) and conflicts with the transmittal letter for entry into the national stage under 35 U.S.C. 371 and with the fees for entry into the national stage under 35 U.S.C. 371. Therefore the papers for filing the application were not clearly identified as a submission under 35 U.S.C. 371. The application papers therefore should have been treated by the PTO as a filing under 35 U.S.C. 111(a).

Applicant is entitled to claim benefit under 35 U.S.C. 120 and 365(c) of the filing date of the international application for common subject matter, since this application (Ser. No.

10/031,689) and the international application (PCT/JP01/02820) designating the United States were copending on 22 January 2002.

The filing fee paid by applicants was \$890. The filing fee for filing a national application on 22 January 2002 under 35 U.S.C. 111(a) was \$740. All national stage fees which were submitted by applicants with respect to this application will be applied to the U.S. national filing fees, and the overpayment by applicants of \$150 (the difference between \$890 and \$740) in filing the application as a national application under 35 U.S.C. 111 will be refunded.

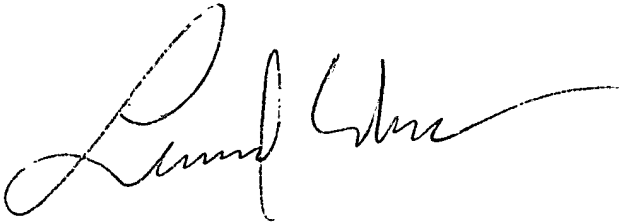
Conclusion

For the above reasons , Applicants' request is **Granted**.

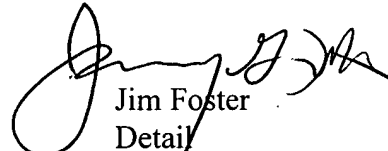
No fee is required for making the request.

This application has been accepted as a U.S. national application filed under 35 U.S.C. 111(a) with a filing date of **22 January 2002**.

This application is being forwarded to Office of Initial Examination for treatment of the application papers as a filing under 35 U.S.C. 111(a) in accordance with this decision and for issuing a corrected filing receipt.



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